

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Batoff, Jeffrey**

Serial No.: **10/085,394**

Group Art Unit: **3627**

Filed: **February 28, 2002**

Examiner: **Buchanan, C.**

For: **INVENTORY CONTROL AND BALANCING SYSTEM**

Honorable Commissioner for Patents  
Mail Stop Patent Extension  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT**

Sir:

This Request for Recalculation of the Patent Term Adjustment is being submitted in accordance with 37 C.F.R. § 1.705(b). The fee specified in 37 C.F.R. § 1.18(e) has been authorized for debit from our deposit account 50-0462 through the EFS-WEB system.

The USPTO determination of patent term adjustment under 35 U.S.C. § 154(b) that was attached to the Notice of Allowance was 1420 days, which assumed that the patent issues on the Tuesday (May 18, 2010) before the date that is 28 weeks after the mailing date of the Notice of Allowance. However, this calculation did not take into account the Federal Circuit's recent decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010). Under *Wyeth*, Applicant believes that it is entitled to a patent term extension equal to the total number of days between April 28, 2003 and the date of issuance, i.e. **2578** days given the presumed issue date of May 18, 2010.

This patent is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. § 1.704.

Recalculation and correction of the Patent Term Adjustment are accordingly respectfully requested.

Respectfully submitted,

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Date: February 16, 2010  
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